



## ***CLOSED CASE SUMMARY***

ISSUED DATE: NOVEMBER 8, 2021

FROM: DIRECTOR ANDREW MYERBERG  
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2021OPA-0136

### **Allegations of Misconduct & Director's Findings**

#### **Named Employee #1**

Allegation(s):		Director's Findings
# 1	5.001 – Standards and Duties 11. Employees Shall Be Truthful and Complete in All Communication	Not Sustained (Inconclusive)
# 2	5.001 – Standards and Duties 5. Employees Complete Work in a Timely Manner	Sustained
# 3	5.001 – Standards and Duties 10. Employees Shall Strive to be Professional	Not Sustained (Inconclusive)
# 4	6.230 – Issuing Tickets and Traffic Contact Reports POL 3. Officers Document All Traffic Stops	Sustained
# 5	16.090 – In-Car and Body-Worn Video 5. Employees Recording Police Activity b. When Employees Record Activity	Not Sustained (Inconclusive)

#### **Imposed Discipline**

Suspension Without Pay – 1 Day

***This Closed Case Summary (CCS) represents the opinion of the OPA Director regarding the misconduct alleged and therefore sections are written in the first person.***

### **EXECUTIVE SUMMARY:**

It was alleged that Named Employee #1 may have been dishonest when wrote that he engaged in traffic enforcement that he knew he did not actually conduct. It was further alleged that this conduct, if true, was unprofessional. It was alleged that he failed to citations and Traffic Contact Reports or to otherwise timely complete documentation concerning his actions. Lastly, it was alleged that he did not record his actions on Body Worn Video.

### **SUMMARY OF INVESTIGATION:**

The Southwest Precinct Captain contacted the Traffic Section concerning Named Employee #1 (NE#1). The Southwest Precinct Captain identified that, while there were multiple holding traffic collisions in the Southwest Precinct on March 1, 2021, NE#1, a Traffic officer, was marked "out of call/available" for the day and was not responding to calls for service over the radio. The Traffic Section chain of command began to look into this matter and asked NE#1 to complete a memorandum detailing his activities on March 1. NE#1 wrote that he attended roll call and then left to go into the field. He documented that: "During my shift I collected 5 citations." He noted that he was on South radio all day and the only dispatchable collision that he became aware of was handled by another officer. He indicated that he "might" have asked DATA to log him "out of car" but that he did not remember doing so. He stated that, regardless, he knew that he was responsible for answering up for collisions and traffic incidents city-wide and he did so.



NE#1's Sergeant generated his own memo that was transmitted to the Traffic Captain. In that memorandum, the Sergeant confirmed that, during NE#1's shift on March 1, there was one collision call that was handled by another officer. The Sergeant identified that NE#1 was called over the radio about another collision at 15:45 hours; however, the Sergeant noted that Traffic officers were usually back at Park 90/5 at that time and were logged out of service. On March 3, 2021, the Sergeant verified that, while NE#1 entered five citations into "stat tracker," the citations were issued at 820 hours, right after roll call was completed. The Sergeant stated that this was prior to NE#1 knowing how many citations he would actually issue that day. The Sergeant verified that NE#1 did the exact same on March 2 and March 3. None of the citations purportedly issued by NE#1 on these dates were entered in SECTOR or had Body Worn Video (BWV) associated with them. A search of SECTOR indicated that, from January 1, 2021 to March 3, NE#1 wrote three citations, all associated with traffic collisions. A search of stat tracker for February 1, 2021 through March 3 yielded 49 citations. However, a search of BWV indicated that NE#1 only recorded video twice from February 1 through March 3 for incidents labeled "traffic." An audit of NE#1's citation/Traffic Contact Report (TCR) books indicated that NE#1 had issued one citation from the book of 25 that he received on October 3, 2018. NE#1 also obtained four books of TCRs (100 total) on October 20, 2020. However, there was no evidence that any paper TCRs were issued, and none were found after an admittedly non-conclusive search conducted by Auto Records. Lastly, the Sergeant supplemented his memorandum to note that NE#1 entered six citations into stat tracker on the morning of March 4, 2021, but there was no BWV associated with those citations, and the citations were not entered in SECTOR.

Based on the above, this matter was referred to OPA by the Traffic Lieutenant and this investigation ensued.

OPA's investigation involved reviewing the documentation generated by NE#1 and his chain of command, as well as other documentation concerning the work completed by NE#1 from January 1 to March 3. OPA also interviewed both the Sergeant and NE#1.

Based on a review of BWV, OPA identified that NE#1 worked 34 full and partial days from January 1 to March 3. OPA verified that there were no unit or other special events during that time that would have occupied a substantial part of or all of these days. During the 34 days, OPA identified on BWV that NE#1 told five motorists that he would be issuing them citations. However, OPA could only locate four citations in SECTOR. OPA also identified that NE#1 responded to 12 traffic collisions during this time. OPA did not have access to stat tracker and also could not independently verify any of the 49 citations listed there that were attributed to NE#1. However, NE#1 provided OPA with a document that outlined the number of citations reviewed by each Traffic officer stemming from video cameras. OPA verified that, from March 1 to March 5, NE#1 reviewed 32 possible citations (28 of which were ultimately approved). OPA also determined that, all in all, he was logged into the video review system for .062 hours. Aside from the above, OPA could not determine what, if anything, NE#1 did while on-duty during the dates in question.

At his OPA interview, the Sergeant stated that he was responsible for supervising NE#1. He became aware of concerns raised about NE#1 by the Southwest Precinct Captain through the Traffic Lieutenant. The Sergeant did not have personal knowledge of what occurred independent from the concerns raised. The Sergeant explained that "out of car/available" meant that an officer was not in their vehicle at the time but was still listening to radio and could answer 911 calls if needed and/or requested. The Sergeant said that he spoke with NE#1 on March 2 after roll call. NE#1 explained that he let DATA know that he was "out of car/available." The Sergeant told OPA that this was not prohibited for Traffic officer. The Sergeant also told OPA that he identified that NE#1 was likely back at Park 90/5 finishing his shift when he was called over radio about the second collision at 15:45 hours.



The Sergeant explained that “stat tracker” was basically a daily log for the work completed by Traffic officers. The officers were expected to account for their own work in the log and each officer had their own tab. The Sergeant said that officers were assigned to a field trainer when they joined the unit and were shown how to use the stat tracker. There was no written documentation governing how the stat tracker was to be used and the Sergeant told OPA that, if an officer had questions, they were expected to ask someone else in the unit. The Sergeant did not know whether stat tracker was described in the unit manual. The Sergeant said that some officers entered information into stat tracker through the day while others did so at the end of shift. The Sergeant indicated that it was “unusual” for the information to be entered at the beginning of the day before any work had been done. Officers could, however, go back into stat tracker and adjust their statistics if needed. For example, if an officer wrote that they were going to issue 10 citations but only issued three, they could later modify their statistics to reflect this.

The Sergeant said that, prior to COVID, it was expected that Traffic officers would make around nine contacts a day with motorists. However, post-COVID, that number dropped to five. The Sergeant clarified that he was not referring to the number of citations that had to be issued and officers could also issue TCRs as a result of the contacts. The Sergeant further stated that, at some point, there was a slowdown in traffic enforcement based on COVID but he could not remember when that occurred.

NE#1 told OPA that, during his two years in the Traffic Section, the unit’s priorities would change. He said that, currently, the priorities were to: “respond to traffic collisions in the city and remove the need for patrol resources to handle those so they can handle other 911 calls, and find other ways to mitigate traffic issues to assist patrol.” He stated that, prior to that, there was more of an emphasis in contacting motorists and investigating traffic violations.

NE#1 indicated that he was trained on SECTOR and how to issue citations from that system. He was also trained to issue hard-copy TCRs when warnings were provided. TCRs were not issued through SECTOR. In addition, some citations could be issued through the mail and not through SECTOR. Lastly, NE#1 said that he received informal training on how to use stat tracker. He said that he was told that he was to enter his daily tasks into stat tracker. NE#1 said that there was no quota for traffic officers as far as citations went, but that they were expected to conduct a certain number of contacts per day, again depending on unit priorities. He said that his understanding was that he could go back into stat tracker and modify information to ensure accuracy.

OPA asked NE#1 about a contact with a motorist in which he did not issue a TCR. NE#1 stated that he had safety concerns with the motorist due to the vehicle’s dark tinted windows and the motorist’s behavior, which included taking time to roll the window down and looking back at him quickly. NE#1 accordingly did not identify the driver to issue the TCR. NE#1 stated that he later realized that he could have completed a “street check” and that he should have done so as he generated this documentation in another similar situation previously.

OPA also asked NE#1 about another incident in which he informed a motorist that she would be receiving a citation after a collision but there was no indication that the citation was ever issued. He believed that he spoke with senior officers after the incident and decided not to issue a citation. He believed that he may have called the motorist to let her know that she would not be receiving a citation in the mail, but he could not verify this.

With regard to the citations he issued on the dates in question in March, NE#1 explained that he did so by logging into a computer program and identifying the violators using video. He noted that this was why there was no BWV associated with the citations. He told OPA that, at that time, he believed that issuing citations from the video met the



requirement for traffic contacts. He since learned that this is not the case and contacts for the purposes of stat tracker necessarily involved being out in the field.

NE#1 acknowledged that he technically violated both SPD Policy 5.001-POL-5 and 6.230-POL-3 (though he equivocated on the latter policy). However, he denied that he acted contrary to the SPD policies governing honesty, professionalism, and the use of BWV.

### **ANALYSIS AND CONCLUSIONS:**

#### **Named Employee #1 - Allegation #1**

##### ***5.001 – Standards and Duties 11. Employees Shall Be Truthful and Complete in All Communication***

SPD Policy 5.001-POL-11 requires Department employees to be truthful and complete in all communications. It was alleged that NE#1 engaged in dishonesty when he wrote in a memorandum and documented in stat tracker that he issued five citations on March 1 when there was no evidence of him doing so. It was alleged that he was further dishonest when he documented in stat tracker the number of citations he would issue immediately after roll call and prior to actually knowing what he would do that day.

At his OPA interview, NE#1 asserted that, when he wrote that he issued five citations, he was referring to his use of video to cite violators. He told OPA that he believed that this was appropriate to enter in stat tracker. He said that, at the time, he did not know that he was only supposed to include citations/TCRs that resulted from actual contacts in the field in stat tracker. He further told OPA that he knew that he could issue the number of citations he documented each day and that, if he did not do so, he would have gone back into stat tracker to modify his numbers.

In assessing NE#1's honesty or lack thereof, OPA notes that he provided evidence indicating that he did, in fact, issue tickets using video on the dates in question. However, OPA still questions the veracity of his account for several reasons.

First, it seems unlikely to say the least that NE#1 would believe that he could enter video citations into stat tracker when no other officer in his squad did so during the months reviewed by OPA. Indeed, OPA's investigation indicated that this explanation was questionable given information provided by other supervisors in the unit.

Second, in the memorandum he completed, NE#1 used very specific phrasing to refer to his actions; namely, he wrote: "During my shift I collected 5 citations." He did not say that he reviewed video for several minutes at the beginning of his shift and identified violators on video. The way he presented his actions made it seem, at least to OPA, that he was actively collecting citations through contacts throughout his shift. This appears to be misleading to OPA.

Third, aside from the roughly six minutes he spent in the computer system over the course of five days, there is no evidence that he took any enforcement whatsoever on March 1. Similarly, his work product on the following two days was minimal if not non-existent. Indeed, this was consistent with the overall picture of NE#1's performance in the Traffic Section for virtually all of January, February, and March of 2021. Over approximately 34 workdays – or roughly 272 hours – NE#1 issued four citations and responded to 12 collisions. Moreover, he activated his Body Worn Video on only 18 occasions during this time period. Evaluating this in context, there are literally hundreds of hours where what NE#1 did cannot be accounted for. This seems particularly problematic in a unit like the Traffic Section where employees have significant autonomy and are expected to properly perform and document their work.



All in all, OPA finds this to be troublesome. While OPA cannot meet its burden to establish dishonesty due to NE#1's explanations – even if they seem to be and may be implausible, OPA can show a repeated pattern of a failure of productivity. Regardless of the lack of a conclusive determination here, OPA strongly recommends that NE#1's chain of command take steps to closely monitor and rectify these issues in order to preserve and respect City and taxpayer resources.

For these reasons, OPA recommends that this allegation be Not Sustained – Inconclusive.

Recommended Finding: **Not Sustained (Inconclusive)**

**Named Employee #1 - Allegation #2**

***5.001 – Standards and Duties 5. Employees Complete Work in a Timely Manner***

SPD Policy 5.001-POL-5 requires employees to complete work in a timely manner. The policy directs that: "Absent exigent circumstances or supervisory approval, employees will complete all required duties and official reports before going off duty." (SPD Policy 5.001-POL-5.)

Based on OPA's limited review of NE#1's work records, OPA found one instance in which he did not issue a citation prior to the end of his shift (2021-048184). NE#1 indicated that, while he intended to issue a citation to the driver, he made the decision not to after speaking with other officers. However, NE#1 did not then complete a TCR and issue that documentation to the driver prior to the conclusion of his shift.

Although OPA was only able to find one instance of this occurring during January through March 2021, OPA worries that a more expansive search of NE#1's work history would yield other similar conduct. Ultimately, however, even one violation is sufficient to establish that NE#1 acted contrary to this policy. As such, OPA recommends that this allegation be Sustained.

Recommended Finding: **Sustained**

**Named Employee #1 - Allegation #3**

***5.001 – Standards and Duties 10. Employees Shall Strive to be Professional***

SPD Policy 5.001-POL-10 requires that SPD employees "strive to be professional at all times." The policy further instructs that "employees may not engage in behavior that undermines public trust in the Department, the officer, or other officers." (SPD Policy 5.001-POL-10.)

OPA finds that this allegation rises and falls on the same facts discussed in the context of Allegation #1. If NE#1 fabricated citation activity this would be unprofessional, as well as dishonest. However, for the same reasons as stated above, OPA cannot meet its evidentiary burden to prove this. This is the case even if OPA has significant concerns regarding NE#1's conduct and account.

As such, OPA recommends that this allegation be Not Sustained – Inconclusive.

Recommended Finding: **Not Sustained (Inconclusive)**



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**Named Employee #1 - Allegation #4**

***6.230 – Issuing Tickets and Traffic Contact Reports POL 3. Officers Document All Traffic Stops***

SPD Policy 6.230-POL-3 requires that officers document all traffic stops using either a citation or a TCR. As discussed above, NE#1 failed to issue either a citation or TCR to the woman involved in a collision in 2021-048184. OPA further identified one other instance where NE#1 failed to document a traffic stop that occurred on February 3, 2021. NE#1 told OPA that he did not want to have an extended contact with the driver because he was worried about safety. NE#1 approached the driver, gave him a warning, and then let him leave. NE#1 did not complete a TCR because he said that he did not know the identity of the driver. However, he did not generate any other paperwork to document that a stop had occurred.

Again, as with Allegation #3, NE#1's conduct violated the letter of the policy. As such, OPA concludes that a Sustained finding is warranted.

Recommended Finding: **Sustained**

**Named Employee #1 - Allegation #5**

***16.090 – In-Car and Body-Worn Video 5. Employees Recording Police Activity b. When Employees Record Activity***

SPD Policy 16.090-POL-1(5)(b) defines when officers will record activity. The policy explains that enforcement and responses to dispatched calls, which would include NE#1's traffic duties, must be recorded on BWV.

As discussed in the context of Allegation #1, above, NE#1 recorded BWV only 18 times during 34 workdays from January to March 2021. This means that he activated BWV fewer than once a day and on almost less than half of the days he worked. What this indicates to OPA is that NE#1 either produced at an extremely low level during this time period or that NE#1 engaged in acts that he did not record. However, OPA cannot definitively prove that the latter scenario is true and, as such, recommends that this allegation be Not Sustained – Inconclusive.

Recommended Finding: **Not Sustained (Inconclusive)**